

1/9/2002

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Advanced Tel, Inc., Certain Shareholders of Advanced Tel, Inc. and TLX Communications, Inc. for Approval of a Stock Purchase Agreement and Related Transactions.

Application 01-08-007  
(Filed August 7, 2001)

**O P I N I O N****1. Summary**

This application seeks approval under Sections 851-854 of the Public Utilities Code of a transaction that will result in a change of control of TLX Communications (U 5598-C) d/b/a TelAmerica, which provides interexchange telecommunications services in California. The transaction is structured to take effect upon approval by government entities, including this Commission. The application is unopposed. The application is granted.

**2. Description of Applicants**

TLX Communications, Inc. d/b/a TelAmerica (TelAmerica) is a privately held Louisiana corporation with its principal business office in Gonzales, Louisiana. It was authorized to provide interexchange telecommunications services in California in Decision (D.) 96-04-035. It also is authorized by the Federal Communications Commission to provide domestic interstate and international services as a non-dominant carrier. TelAmerica is a telecommunications reseller in California with only 26 customers. It possesses

federal and state authorizations to provide telecommunications services in 19 other states.

As shown on Attachment A, Advanced Tel, Inc. is one of the many subsidiaries of EATELCORP, Inc. (EATEL), a telecommunications holding company incorporated in Louisiana with its principal business office also in Gonzales, Louisiana. The EATEL name originates from the East Ascension Telephone Co., Inc., which has been in operation as a local exchange carrier in Louisiana for 65 years, serving Ascension Parish and other areas of Louisiana. EATEL is not certificated in California.

### **3. Description of Transaction**

The parties have entered into a stock purchase agreement, attached to the application as Exhibit 1, in which EATEL will acquire 100% of the issued and outstanding capital stock of TelAmerica, thus leaving TelAmerica as a wholly owned subsidiary. The final step in the transaction, including the ultimate transfer of control, is conditioned upon receipt of required regulatory approvals, including the approval of this Commission.

After the transfer of ownership and control, TelAmerica will continue to operate as it has in the past, using the same name and operating authority and functioning as a wholly owned subsidiary of EATEL. The applicants do not seek to transfer TelAmerica's operating authority in connection with this transaction.

Applicants state that although the transaction will result in a change in control, it will not involve any change in TelAmerica or in the manner in which services are provided to TelAmerica's customers. TelAmerica will continue to operate under its current name, providing service under its existing tariffs. Applicants state that the transfer of control will be transparent to customers and will have no adverse impact upon them. In fact, applicants claim that the

efficiencies, technological enhancement, and capital infusion that will flow from the stock purchase will allow TelAmerica to provide better service to its California customers. Exhibits attached to the application describe the transaction in greater detail.

#### **4. Public Interest**

The application states that the transfer of control will serve the public interest by maintaining or improving TelAmerica's financial resources and its quality of service. Applicants state that the acquisition of TelAmerica by EATEL will promote competition by enabling TelAmerica to have access to additional capital so that it may expand and improve its facilities and service offerings in California.

The parties in the application have attached copies of their financial statements, and they have attached a copy of the agreements describing the proposed transfer of control.

#### **5. Discussion**

Pub. Util. Code §§ 851-854 require Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state...." The purpose of these sections is to enable the Commission to review the situation before any transfer of public utility property is consummated, and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not have a certificate of public convenience and necessity (CPCN) desires to acquire control of a company that does possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN for the first time. Since TelAmerica has a CPCN to act as a reseller of interexchange telecommunications services in California, but not

one to operate as a facilities-based competitive local carrier, we apply the less stringent reseller requirements.

To obtain a CPCN as a reseller of interexchange telecommunications services, an applicant must possess the requisite managerial qualifications, technical competence and financial resources consisting of a minimum of \$25,000 in cash or cash equivalent. Financial documents filed with this application show that EATEL meets the financial requirements. EATEL also has demonstrated the requisite management and technical competence. Dan Ahern, President of EATEL has over 20 years' experience in the telecommunication industry. John Scanlan, Executive President and Vice President of EATEL is a third generation owner of the company with experience beginning in 1979 as a teenager working his way through college as an installer, repairman/lineman.

The proposed transfer of control promises improved service for California consumers. No changes in the existing service of TelAmerica are proposed.

In Resolution ALJ 176-3069, dated August 23, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3069.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of August 13, 2001.
2. Applicants seek approval pursuant to Pub. Util. Code §§ 851- 854 of a transaction that will transfer control of TelAmerica to EATEL.
3. TelAmerica is authorized to provide interexchange telecommunications services in California, as well as domestic interstate and international services, but EATEL is not certificated in California.
4. There will be no change in name, current services or rates provided by TelAmerica as a result of the transfer of control.
5. EATEL has the financial resources and the technical and managerial experience to continue to operate TelAmerica at the same level of service as now provided by TelAmerica.

**Conclusions of Law**

1. The proposed transfer of control is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. The application should be approved.

**O R D E R**

**IT IS ORDERED** that:

1. TLX Communications, Inc. d.b.a. TelAmerica and Advanced Tel, Inc. (EATEL) (collectively, applicants) are authorized pursuant to Sections 851 to 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which EATEL will acquire control of TelAmerica.

2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

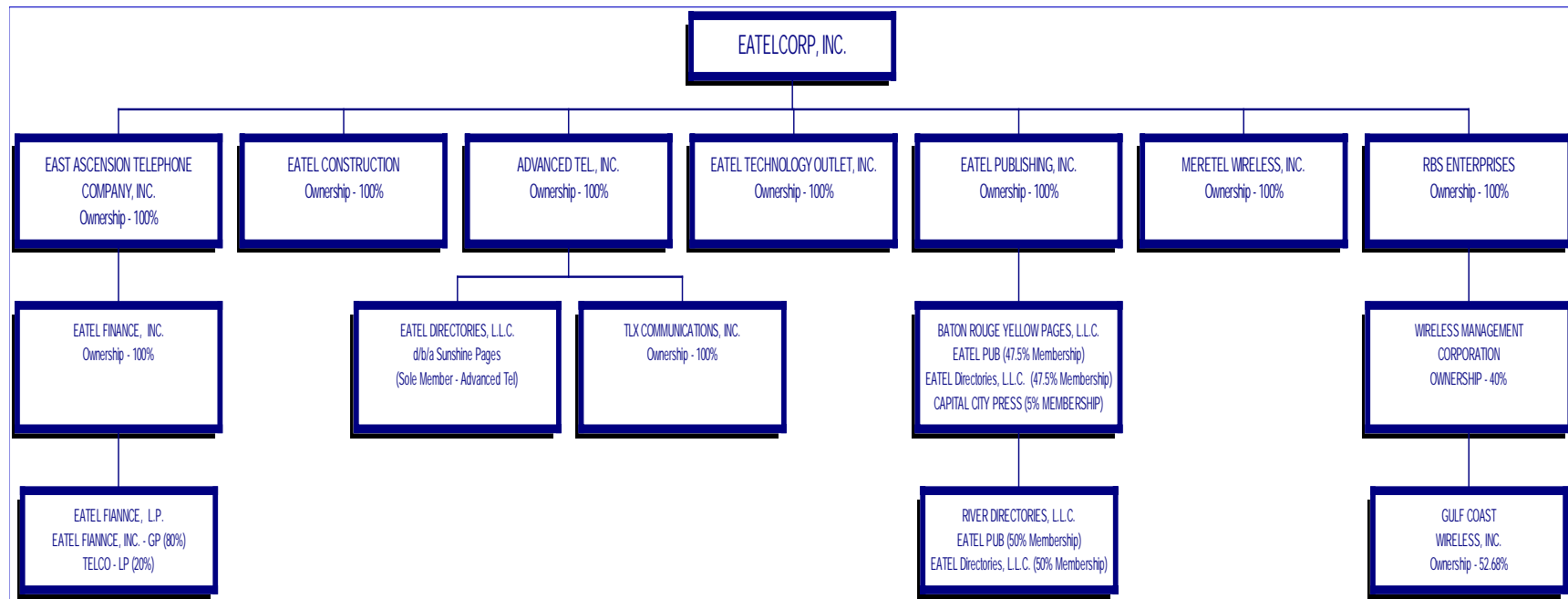
3. TelAmerica shall make all books and records available for review and inspection upon Commission staff request.

4. The authority granted herein shall expire if not exercised within one year of the date of this order.

5. Application 01-08-007 is closed.

This order is effective today.

Dated \_\_\_\_\_, 2001, at San Francisco, California.

**Attachment A****EATEL CORP & SUBSIDIARIES****(END OF ATTACHMENT A)**